IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE

WRIT PETITION NO.5094 OF 1999

1. Baban Haribhau Yadav

2. Mansingh Haribhau Yadav

3. Pratap Haribhau Yadav .. Petitioners

All adults, Occ.Agriculture,
R/o.Jajuri, M.I.D.C., Gat No.
425, Taluka-Purandhar,
Dist.Thane.

v/s.

1. The State of Maharashtra

2. Special Land Acquisition Officer
No.3, Pune 2.

3. Local Officer (Pradeshik
Adhikari), Maharashtra
Industrial Development
Corporation (MIDC), Pune-5. .. Respondents

Mr.P.B.Shah for the petitioners.

CORAM : R.M.S.KHANDEPARKAR AND
V.M.KANADE, JJ.

DATED : 18th August, 2005

ORAL JUDGMENT (Per V.M.Kanade, J.)

The petitioners are challenging the acquisition proceedings under the provisions of the Maharashtra Industrial Development Corporation Act, 1961. The petitioners are challenging the notice dated 11th April, 1989 and the notification dated 4th September, 1993 issued by the respondent No.3 under Articles 226 and 227 of the Constitution of India.

2. The brief facts are as under:-

It is the case of the petitioners that they owned and possessed agricultural land bearing plot No.425, admeasuring 6 acres and 14 gunthas, situate at Jejuri, Taluka Purandhar, District Pune. It is contended that their names are entered into 7x12 extracts, both in the ownership as well as cultivation. It is further contended that they are paying assessment dues to the respondents. It is the case of the petitioners in the petition that the respondent No.2-Special Land Acquisition Officer No.3, Pune initiated the acquisition proceedings for and on behalf of respondent No.3. The petitioners' contention is that the Government of Maharashtra through the Industrial Labour Department had issued circular dated 15th February, 1971 and by the said circular informed all its officers that as far as possible, agricultural land should not be acquired.

The petitioners have further contended in the petition that the land in question is Bagayat land which was partitioned in 1985 and each of the petitioners are in possession of 2 acres and 5 gunthas out of the total land. It is further averred in the petition that prior to 1982, the

petitioners were owners of the land bearing Gat No.390 which land was also situate at Jejuri, Taluka Purandhar. This land was also acquired by the respondent No.1 for and on behalf of the third respondent- MIDC. It is contended that an assurance was given at that time to the petitioners that no further land of the petitioners holding was acquired for MIDC and that would not be rendered them homeless or landless.

Thereafter, the notice dated 11th April, 1989 was issued for acquisition of the balance land which was in possession of the petitioners for and on behalf of the Maharashtra Industrial Development Corporation-respondent No.3 herein. It is contended that they had filed their objections for the said acquisition. However, without giving hearing, final notification under sub-section (2) of section 32 of the Maharashtra Industrial Development Act was issued on 4th September, 1993. The petitioners had made representation against the said notice. However, since the said representation was not decided, initially they had filed suit which was withdrawn in view of the judgment of the Supreme Court in which it has been held that the civil suit challenging the validity of the acquisition was not maintainable. After the withdrawal of the suit, the

present writ petition has been filed by the petitioners.

3. The learned counsel appearing on behalf of the petitioners has contended that the Government had from time to time issued circulars wherein the policy of the Government of not acquiring the agricultural land for the purpose of industrial development had been reiterated. It is submitted that on account of these circulars wherein the said guidelines have been laid down, the Government had released the lands of several persons from the proposed acquisition. The learned counsel submitted that 5 acres of land belonging to Jaysing Namdeo Hormane has been released from the acquisition. The learned counsel also invited our attention to para 18 of the petition in which the names of various persons have been mentioned. It is submitted that therefore, on the same analogy, the lands of the petitioners also are liable to be released from acquisition.

4. We are unable to accept the submissions made by the learned counsel for the petitioners. It is an admitted position that final notification under sub-section 2 of section 32 of the said Act has been passed as a result of which the land has vested in

respondent No.3 MIDC. The circular on which reliance has been placed by the petitioners clearly lays down the policy of the Government and it is not possible to set aside the acquisition of the land of the petitioners by issuing a writ of mandamus for the purpose of implementing the policy of the Government. Moreover, the said circular which is annexed to the petition at Exhibit "C" dated 15.2.1971 merely brings certain facts to the notice of the various officers working in the various departments of the Government. In the circular, it is observed that in the past agriculture land had been dropped from the acquisition proceedings. However, it was brought to the notice of the Government that after the acquisition proceedings had been dropped, the agriculturist had applied for converting the said land into non-agricultural land as a result of which agricultural production was hampered and that the purpose for which the said lands were dropped from the acquisition was seriously affected. The circular, therefore, does not state that the agricultural lands should not be acquired. On the contrary, the said circular seeks to bring to the notice of the officers of the Government that if such lands are dropped from the acquisition proceedings, it entails serious consequences of conversion of land from agricultural

goods to non-agricultural goods. Therefore, the said circular, in any case, would not be of any assistance and does not support the case of the petitioners.

5. So far as other contention of the petitioners is concerned that the acquisition of the petitioners' land would render him landless and therefore, the said acquisition proceedings should be dropped, this submission also in our view, cannot be accepted. There is no provision under the MIDC Act or the Land Acquisition Act which carves out an exception in the case of agricultural lands The next submission made by the learned counsel appearing on behalf of the petitioners is that no personal hearing has been given to him before issuing notification under sub-section (2) of section 32 of the said Act. The acquisition proceedings have already been completed and award was passed before the writ petition was filed. Even the possession of the land is taken on 29.4.1995 and the same was handed over to M.T.D.C. This contention therefore will not be available to the petitioners at this belated stage. Lastly, the contention raised by the petitioners that the lands of other similarly situated persons have been dropped from the acquisition and therefore, the petitioners' lands also should be released, this

contention also cannot be accepted as there is no evidence on record to show that the petitioners and the other persons whose lands were allegedly released from acquisition are similarly situated.

6. In the result, there is no substance in the submission made by the learned counsel for the petitioners. Writ petition is, accordingly, dismissed. Rule is discharged. Interim relief, if any, stands vacated.

(R.M.S.KHANDEPARKAR, J.)

(V.M.KANADE, J.)